

MORGANTOWN BOARD OF ZONING APPEALS MINUTES

January 17, 2007

6:30P.M.

City Council Chambers

Members Present: Nick Iannone, Jim Shaffer and Mark Furfari

Members Absent: Bernie Bossio and Jim Rocks

Staff Present: Christopher Fletcher, Planning Director.

MATTERS OF BUSINESS:

A. Election of Leadership

- i. Motion to nominate Nick Iannone as chair by Shaffer, second by Furfari. Discussion ensued and a motion was made to postpone the vote for Chair and Vice-Chair until all of the board members are present by Furfari, second by Shaffer. Motion carried unanimously

B. Approval of the December minutes was postponed to the next meeting.

OLD BUSINESS: None

NEW BUSINESS:

- A. V07-06 / Panico / Beechurst Avenue:** Request from Joe Panico for variance approval from Appendix A development standards and from Article 1361.03 as it relates to ground floor on residential percentage of the Planning and Zoning Code. The property is located on Tax Map #19 P#128, 36, 37, 38; a B-2, Service Business District, R-3, Multi-Family Residential District, and Beechurst and South Sunnyside Overlay Districts.

Fletcher read the staff report stating that the petitioner seeks to raze two existing structures and construct a mixed use structure. The structure will contain 87 one and two bedroom units and approximately 3,200 ft² of retail space fronting Beechurst Avenue. The structure will be five stories or approximately 55 feet in height; four stories of residential and non-residential uses above one story of internal parking. Proposed setbacks for front is 12 feet, which does not meet the required 15 feet minimum setback; proposed side setbacks is 5 feet for both sides, which does meet the 5 foot requirement; and proposed rear setbacks is 25 feet, which also meets the 15 feet requirement. Proposed lot coverage is approximately 60%, which is less than the 70% permitted on the Sunnyside overlay district. Based on the parking calculation, the minimum spaces required are 54 for residential use and 10 for the non-residential use. The proposed parking exceeds requirements by allowing for 94 spaces, this plan also designates 4 handicapped spaces. Ingress of internal parking

and surface parking areas would come from Fourth Street. Egress would be provided onto Fourth and One Half Street.

Fletcher continued that Addendum A illustrates the location of the subject realty. Addendum B contains a review with the Sunnyside Overlay District design and performance standards.

Fletcher added the following approvals must be obtained for the proposed project prior to building permit application:

- Site Plan Type III Development of Significant Impact, approved by the Planning Commission
- An alley annulment, approval by City Council.
- Minor Subdivision to combine four parcels including a portion of the annulled alley, approved by the Planning Commission.
- Three variances to be approved by the Board of Zoning Appeals:
 - Front setback variance
 - Fenestration percentage variance for the ground floor and front facade along Beechurst Avenue
 - Ground floor nonresidential percentage variance

Fletcher advised that the Planning Commission approved the Minor Subdivision and the Site Plan Type III with the conditions recommended by the staff, which included the alley annulment.

Panico explained that this is a large project designed by local architects and that they have attempted to accommodate everything according to the zoning ordinance. He continue that the front yard setback is the issue. They have a 15 feet setback, but the overhang would actually be 12 feet. Panico stated his understanding was that he could go to the property line, but after discussion with the City Planner and the Planning Commission over the confusion of the ordinance, the Planner advised that it was actually a 15 foot setback. The building will set back from the two existing adjacent buildings.

Panico explained the issue with the ground floor commercial space. Panico state that if 60% of the floor was used for commercial it would create approximately two 8,000 ft² commercial spaces. Based on the structure being primarily student housing and the lack of demand for commercial space on Beechurst, that would create unusable space. The architect created two manageable 1,600 ft² flexible spaces, which includes a corridor in the middle. A courtyard would be placed in the front center of the building fronting Beechurst.

Panico addressed the variance needed for the fenestration of the building based on a requirement in the Sunnyside Overlay. This requirement is for 60% fenestration on the ground floor and 50% total fenestration for building facades facing primary streets and

public open spaces. Due to the large amount of glass, Mr. Panico believes it could cause other issues for the building and tenants. Panico stated they have about 75% of the 60% requirement on the ground floor and stated that the structure is unique to the area. This is the first phase of a four phase project that will have similar buildings fronting Beechurst. He continued that the Augusta is not required to meet the fenestration requirement because they previously went to a PUD. He had considered going the PUD route, however, based on the needs of the project and talking with the City Planner, they felt this may be a more direct approach without needing to go through the PUD process. Panico followed up by addressing the questions on the application. Stating it would not adversely affect the adjacent property owners; it would permit a reasonable use to the land, and has met the substantial portion of requirements of the ordinance to make this project a go at the first stage.

Furfari stated based on the design, the glass on Beechurst may create a problem for the bedrooms facing the street and asked if Mr. Panico had considered moving the living space to the front to reduce the noise issue.

Mr. Panico explained that the plan called for the entrances off of the hallway. Changing the design may reduce the number of apartments in the building.

Furfari questioned that on the 2nd through 5th floors Mr. Panico would be at 29% fenestration.

Fletcher clarified the fenestration requirement and stated that the first floor is 60% and total building, including the first floor, is 50% for facades facing primary streets.

Panico commented that the requirement is only in the overlay districts.

Furfari stated Mr. Panico is leading this process and would set the standard.

Panico commented he understands that, and stated that he hopes to use this standard in future development.

Furfari asked for clarification on the courtyard.

Panico stated the courtyard is open air and is basically there to gain access to every unit.

Furfari clarified that the courtyard starts on the ground level and goes to the top of the structure. He asked that If he was required to meet the 60% how would it relate to the courtyard.

Panico stated that that large of a space is not in demand in town and would not be marketable. He could rent a 1,600 sq. ft. space. The apartments are aligned by design on the commercial front and stacked all the way from the parking garage to the top.

Shaffer thanked Mr. Panico for his presentation and raised concerns on the traffic flow.

Panico stated the traffic would ingress onto his property one way from Fourth Street and egress onto Fourth and One Half Street.

Shaffer asked if Fourth and One Half Street would also be one way.

Panico stated that Fourth and One Half Street is a public street and would remain two-way.

Shaffer asked about the property along the back of the property near the trail.

Panico stated that he would love to create a walkway and landscape the bank but is the right of way of the trail.

Shaffer asked how far his property was from the trail.

Panico stated that it is probably 20 feet and the PRT is in that area.

Shaffer asked about lighting for the parking lot in the back.

Panico stated he has no problem meeting any light and sidewalk requirements of the ordinance.

Shaffer asked how many people under roof would be there.

Panico stated about 112 people.

Shaffer asked if the exterior would be brick and stucco.

Panico stated the first floor is about 12 feet high and drops down to the 8 feet level in the rear.

Fletcher advised that the cladding materials list has not been finalized. The site plan was approved with the condition of the building materials being 100% in compliance and any deviation would have to come back to the Board of Zoning Appeals.

Panico stated he did not anticipate requesting a variance for cladding materials.

Iannone stated the structures could also have large windows.

Panico stated that the windows would not be functional and does not believe it would compliment the structure, hence the variance.

Iannone stated the Board must have a compelling reason to grant a variance from the code and understands what Mr. Panico is proposing. However, the Board does not

write the zoning ordinance; they enforce it as it is written. Iannone asked since Mr. Panico was providing 46% commercial on the first floor, if he could provide 60% instead.

Panico stated that the commercial space is easier to work with than residential. The company providing the modulars does not provide windows that large.

Furfari asked if these would be apartments or condominiums.

Panico stated that they would be apartments.

Don Corwin Jr, Wincor Properties, stated his company owns the property adjacent to Mr. Panico's and they are in favor of the approvals and that he would like to address the ground floor non-residential floor volume. He stated that they have a 2,000 ft² commercial space located immediately adjacent to his proposed site and that the space has been for rent for one year and had not received any inquiries. Mr. Corwin believes that Mr. Panico's comments about commercial space being hard to rent in that area are correct and that the space is better utilized as residential. He continued that on the issue of the glass, his proposal is consistent with the buildings there and with that much glass it would create a large contrast with the current building directly adjacent to the property. Mr. Corwin reiterated the lack of demand for commercial property and supported Mr. Panico's comments.

Shaffer asked Mr. Corwin asked if he had any idea of the percentage of glass on his building.

Mr. Corwin stated it varies, but he believes it is close to 60% on the ground floor but decreases dramatically going up. Mr. Corwin also stated as a side note that maintenance and replacement of that amount of glass along that corridor would be significant. That area is a high cost maintenance area.

Furfari asked where his property is located.

Mr. Corwin stated the building where Thinkin' Ink is currently located and the other is a larger building that has hosted numerous businesses but currently sits empty and has for a year.

Roger Mocross, Chico Enterprises, stated that they also support Mr. Panico's attempt in creating something that would benefit the area and the city. He also stated that they do have an issue with the annulment of the alley, because they use the alley on a daily basis. They use it to move product, get supplies and have large semis coming in from all over the eastern part of the US. He continued that they have a lot which is immediately vacant to the south side of Third Street that has a gate. This gate has been in use since the mid 30's for deliveries. Since the trucks have an issue getting back on to Beechurst, they come into the gate on Third Street and then use the alley to

get back onto Beechurst, due to the traffic congestion. If the alley is annulled it could create great problems. Mr. Mccross submitted a letter to the Board.

Furfari asked if he could get around that by going on the river side of the PRT.

Mr. Mocross stated he did not know.

Shaffer stated by crossing Sixth Street and there is a crossing on the other side of the railtrail.

Mr. Mocross stated that there is a pillar there for the PRT that may affect the trucks trying to make a turn. Where they access the red light is in front of the steam plant and does not know what the steam plant would allow for access.

Furfari stated it may clog up if the alley is annulled. But that is for Council to decide.

Mr. Don Oakes, Executive Director of Sunny-side up, stated that he has been working on with Mr. Panico for almost a year on properties in the Sunnyside area. Mr. Oakes stated he respects their desire to abide by the zoning ordinance in place, but believes that in this case he has met the major zoning requirements. Regarding the commercial space, Mr. Oakes agrees with the comments of Mr. Panico and Mr. Corwin on leasing commercial space until Sunnyside is redeveloped further and has a higher density. Regarding fenestration, Mr. Oakes stated that having residential on a major thoroughfare; too many windows may be lack of privacy. Based on the building sitting back 5 to 6 feet further than the current buildings, you would not get the full effect of the windows. He would appreciate the assistance of the board in helping with this development. Mr. Oakes stated redevelopment is needed in the Sunnyside area.

Panico gave a follow up that based on discussion with the architects and a traffic study he is confident that he will meet everything required. He asked that the ally annulment not have any bearing on the application for a variance.

Iannone announced the issue will go to closed session.

Fletcher read the staff recommendation. He stated that the proposed project represents a unique opportunity to redevelop dilapidated and underutilized property in the Sunnyside Neighborhood into a modern higher density mixed-use structure. He continued that the proposed development appears to incorporate land uses, design standards, and development patterns envisioned by the "Sunnyside-Up Neighborhood Plan." The petitioner met with the Technical Review Committee on November 28th and has incorporated all suggested modifications.

Fletcher continued that the Board of Zoning Appeals must determine weather the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the findings of facts submitted by the applicant. Staff concurs

with the findings and facts submitted by the petitioner and recommends approval of the three requested variances with the following conditions:

1. The applicant is granted a full or partial annulment of the alley connecting Fourth Street and Fourth and One Half Street by Council.
2. That minor subdivision approval be granted by the Planning Commission (has been approved with conditions.)
3. That a Development of Significant Impact Site Plan Type III be approved by the Planning Commission (has been approved with conditions.)

Fletcher advised that there are three separate variances:

Variance A. - Front setback.

Motion to accept each of the findings of fact as presented by the applicant and to approve the variance request of the front setbacks as requested with staff recommended conditions by Shaffer, second by Furfari. Motion carried unanimously.

Variance B. – Fenestration percentage variance.

Findings of Facts:

1. Question - There are exceptional or extraordinary circumstances or conditions applicable to this property or the intended use that generally do not apply to other properties or uses in the same vicinity because;

Answer – The proposed development is the first along Beechurst Avenue that has is required to meet the design and performance standards of the Sunnyside Overlay Districts. The architectural vocabulary proposed for the front façade introduces modern design while existing pleasantly with the traditional adjacent structures due to the breakdown of mass scale adherence in proportionality. The proposed rhythms of glass and masonry mass produce unique light and shadow effects through the articulation of massive forms in elegant subtractions which could not be achieved through strict adherence to the required administration ratio.

Fletcher stated that this is the first time the Board has dealt with architecture. He believes that in the future, particularly in the Sunnyside Overlay District, where the questions will be answered with more of the architectural flare. Normally the setbacks and height are more black and white.

Iannone stated he would be more inclined to approve with the 60% commercial requirement met.

Shaffer agreed. He is willing to accept this as proposed.

Iannone stated the way the ordinance is written does not matter if they agree with it. Asking for 60% on commercial is acceptable. He is willing to accept as written because it complies with the intent of the ordinance.

Shaffer agreed with the Director of Sunnyside Up asking to consider that the applicant is meeting the attempt with this ratio, it is a reasonable request.

Fletcher stated that fenestration ratio regulations generally have two objectives – one is to ensure quality of light; the second is to break up face of the building. This seems to be accomplished by the texture and shadowing effects proposed in the facade of the building.

Iannone stated that the break up of the plane appears to achieve the same as the fenestration.

Furfari stated that the Board is trying to avoid the big boxes; there are examples of those boxes there now. We are setting the standard and every developer from here out will know that standard.

Iannone stated that is why we hold on the 60% for commercial standard. The applicant seems to be willing to go along with that.

Iannone asked if the Board accepted the first findings and facts as written. He asked by show of hands all in favor. Vote was unanimous.

Findings and Facts:

2. QUESTION: The variance is necessary for the preservation and enjoyment of a substantial property rate that is possessed by other properties in the same vicinity and zoning district which is denied to this property because:

ANSWER: The proposed design of the front façade and the entire building incorporates a much higher degree of fenestration, natural light and quality design than neighboring structures.

Moved to accept by Shaffer, second by Furfari. Motion approved unanimously.

3. QUESTION: The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning districts in which the subject property is located because:

ANSWER: The degree of fenestration proposed including the internal courtyard would provide quality living space unmatched within the immediate area. The architectural design of the building will significantly enhance adjacent property, improvements and neighborhoods overall

environment. All of which will not be diminished by granting a fenestration variance.

Move to accept by Furfari, second by Shaffer. Motion approved unanimously.

4. QUESTION: The granting of this variance will not alter the land use characteristics of the vicinity of the zoning district, or diminish the market value of adjacent properties, or increase the traffic congestion on public streets because:

ANSWER: A fenestration variance would not detract from the significant improvement anticipated with the quality and character of the site surrounding area. The project is expected to enhance the market value within the immediate area by promoting quality redevelopment. A fenestration variance can not result in or contribute to an increase in traffic congestion. The proposed development improves intended land use development by providing a higher degree of fenestration than neighboring structures.

Moved by Furfari to accept the finding of fact as written, second by Shaffer. Motion carried unanimously.

Furfari moved to grant the fenestration variance with the condition that the ground floor fenestration ratio meet or exceed the minimum standard of 60% and that the remaining façade includes no less fenestration than that represented in the application documents, second by Shaffer. Motion carried unanimously.

VARIANCE C: Ground floor nonresidential percentage.

Motion by Shaffer to accept the findings and facts as written by the applicant, second by Furfari. Motion carried unanimously.

Motion by Shaffer to grant the variance with the condition that the area reserved for non-residential uses may not be reduced from that shown on the application documents, second by Furfari. Motion carried unanimously.

B: V07-01 / KMA Design / Two Waterfront Place. A request from KMA Design, on behalf of Waterfront Hotel, for variance approval from 1369.07, Conditions for Permitted Signs of the Planning and Zoning Code as it relates to sign size at Two Waterfront Place. Tax map #37A Parcel #3.1; B-4, General Business District.

Fletcher read the staff report stating the KMA Design seeks a variance approval for the replacement of existing signage and the erection of additional signage at the Waterfront Hotel. Fletcher read the applicable zoning codes for this request.

Fletcher stated the proposed signage requires a variance of 397 ft². The Downtown Review Committee has reviewed and approved the proposed signage.

Barbara Martin, CEO of KMA Design, stated the building visibility is currently limited. They would like to increase the visibility of the hotel and the other two businesses contained in the building from the highway. An increase of footage could allow for all business to be represented. Additional signage could be used for visibility from the Rail Trail. The hotel also wants to increase the mark for identification from the building that sits adjacent. The building height is also a consideration for limited visual identification.

Iannone asked for public comment, there being none, the public portion was closed.

Fletcher read the staff recommendation and stated that it is the opinion of the Planning Department that the scale of the hotel in relation to the rest of the B-4 building environment warrants variance consideration. The staff concurs with the findings of facts as submitted by the petitioner with the additions to findings of facts #2 as noted in the Staff Report.

Motion to accept the findings of facts with staff recommendations by Shaffer, second by Furfari. Motion carried unanimously.

Motion by Furfari to approve the variance petition as requested, second by Shaffer. Motion carried unanimously.

C. V07-02 / Moser Investments, LLC / 300 Beechurst Avenue: Request by Moser Investments, LLC for variance approval from Appendix A: Development Standards Table of the Planning and Zoning Code for property located at 300 Beechurst Avenue. Tax Map #19 Parcel #115 Zone B2, service business district.

Fletcher read the staff report. He stated that the applicant seeks to construct a 60 X 14 addition for inventory storage onto the rear of the existing structure. The rear setback for the proposed addition is 15 feet; the minimum rear setback requirement in the B-2 district is 40 feet. As such, the petitioner must obtain a 25 foot variance. The proposed project meets all remaining applicable design and performance standards. Addendum A illustrates the location of the subject site and a photograph, submitted by the petitioner, of another structure in the area that does not comply with rear yard setback requirements.

Joe Moser explained the need for the storage space and the lack of area to the front and side to expand leaving the only option in the rear.

Furfari asked if this expansion would be used for the crates currently stored in the rear.

The applicant responded that the new space would be used to store the crates and other commodities.

Iannone asked for public comment. There being none, the public portion was closed.

Fletcher read the staff recommendation and stated that staff recommends approval of the variance as requested, with the following amendments to the findings of fact to #1, #2 and #4.

Finding of fact:

1. QUESTION: There exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use that generally do not apply to other properties or uses in the same vicinity because:

ANSWER: Properties in the vicinity currently have setbacks less than or equal to 15 feet. * Modification: The existing structure does not meet the new minimum rear setback requirements of 40 feet, which were previously 15 feet. This leaves no opportunity to provide much needed inventory storage space to the rear of the building under the new standard. A storage addition to the front of the structure would eliminate existing parking stalls.

Motion to approve the finding of fact as amended by Shaffer, second by Furfari. Motion carried unanimously.

2. QUESTION: The variances necessary for the preservation and enjoyment of substantial property right that is possessed by other properties in the same vicinity and zoning district, but which is denied to this property because:

ANSWER: The Ashbrooke Liquor Outlet needs expansion of building to be used as warehouse space for consumer product in the store therefore providing faster consumer services satisfaction. * Modification: There are other structures within the area that do not conform to the setback requirements.

Motion to accept as amended by Furfari, second by seconded. Motion carried unanimously.

3. QUESTION: The granting of this variance will not be harmful to the public welfare and will not harm property or improvement in the vicinity and zoning district in which the subject property is located because:

ANSWER: The rear setback will not change the fact that there is still parking behind the building, and ingress and egress.

Motion to accept by Shaffer, second by Furfari. Motion carried unanimously.

4. QUESTION: The granting of this variance will not alter the land use characteristics of the vicinity of the zoning district, or diminish the market value of adjacent properties, or increase the traffic congestion on public streets because:

ANSWER: The current ingress and egress is on property that is owned by Mosier Investment LLC. * Modification: The proposed addition will only serve the needs of the existing business.

Motion to accept as amended by Shaffer, second by Furfari. Motion carried unanimously.

Motion by Shaffer to grant variance petition as requested, second by Furfari. Motion carried unanimously.

D V07-03 / Edward Jones Investments / 1427 Earl Core Road: Request by City Neon, on behalf of Edward Jones Investments, for variance approval from Zoning Ordinance 1369.07, Conditions for Permitted Signs of the Planning and Zoning Code as it relates to sign size at 1427 Earl Core Road. Tax Map #31 Parcel #100 & 101.1; a B-5, Shopping Center Business District.

Fletcher read the staff report and the code requirements for signage and stated the applicant's proposal is for a variance approval to erect signage in excess of 12 ft². The applicant has proposed a 33.65 ft² of signage, including one wall sign of 30.84 ft² and a door sign of 2.81 ft². Therefore, the applicant must obtain variance approval of 21.65 ft².

Fletcher continued that there are attached tables and photos of other businesses in that shopping complex that exceed the sign requirement.

Jim Sheridan, City Neon, explained the need for larger signage. He stated that it would assist with the visibility of the business from the road and would be in line with current signage at the location.

Iannone asked for public comment. There being none, the public portion was closed.

Fletcher read the staff recommendation and stated that the Department does not submit a recommendation in favor of or in opposition to the subject variance petition.

Iannone asked why the Planning Department declined to submit a recommendation.

Fletcher advised the Department feels the sign could be modified to better meet the intent of the ordinance while not adversely impacting the business.

Motion by Shaffer to accept the findings of fact presented by the applicant, second by Furfari. Motion carried unanimously.

Motion by Shaffer to grant the variance petition as requested, second by Furfari. Motion carried unanimously.

E. V07-05/ Lipphardt / 227 Chestnut Street: Request by Erich Lipphardt for variance approval from Zoning Ordinance 1369.07, Conditions for Permitted Signs of the Planning and Zoning Code as it relates to sign size at 227 Chestnut Street. Tax Map #26A Parcel #47; a B-4, General Business District.

Fletcher read the staff report and stated that Erich Lipphardt recently purchased the Riverstone Ale House at 227 Chestnut Street.

The petitioner has removed illegal signs and seeks variance approval for his existing 12 ft² sign on the building's Chestnut Street side. Fletcher read the code regarding the size of the sign. The applicant needs a variance of 6.4 sq.ft. The Downtown Design Review Committee has reviewed and approved this sign.

Addendum A of this report illustrates the location of the site and includes a photo of the existing sign.

Erich Lipphardt stated he received notice about the sign being out of compliance. He apologized for the sign be erected already and requested to keep the sign.

Furfari asked Mr. Lipphardt's landlord and did he give you any guidance for the sign.

Mr. Lipphardt stated that Joe Panico gave no guidance for the sign. He gave a history on the business changing hands. He also stated that the open sign has been moved inside of a window and have the temporary sign outside.

Iannone asked for public comment. There being none, the public portion was closed.

Fletcher read the staff recommendation and stated that staff concurs with the findings of fact as submitted by the petitioner and recommends approval with the following conditions. 1) That the illegal K.C. sign at the northeast corner of the building be removed within 30 days. 2) That the removal and/or covering plan be accepted by the Planning Department and report to the Board of Zoning Appeals within 6 months for the illegal Pepsi Co/K.C. sign on the west façade facing the Monongahela River. 3) That no additional permanent signage for the subject establishment be erected at this location.

Erich Lipphardt questioned the variance requirement.

Fletcher clarified that the Planning and Zoning Code states that no new signs may be erected where current illegal signs are located. A new sign could be authorized after illegal signage is mitigated. Staff recommendation is to recognize Mr. Lipphardt's efforts to comply with the sign regulations by removing at least two illegal signs and address the remaining illegal signs by working closely with the property owner.

Motion to accept the findings of fact by Shaffer, second by Furfari. Motion carried unanimously.

Motion by Shaffer to approve the variance petition with the following conditions:

- a. That the illegal K of C sign at the north-east corner of the building be removed by the property owner within thirty days.
- b. That a removal and/or covering plan be submitted by the property owner, accepted by the Planning Department, and reported to the Board of Zoning Appeals within six months for the illegal Pespi Co. / K of C sign on the west façade facing Monongahela River.
- c. That no additional permanent signage for the subject establishment may be erected at this location.

Second by Furfari. Motion carried unanimously.

COMMENTS FROM BOARD MEMBERS AND STAFF:

None

PUBLIC COMMENTS ON NON AGENDA MATTERS:

None

MEETING ADJOURNED 8:10.